



Panel 9: Elder Care Abuse and Special Vulnerability

Kirsten Ketscher, Denmark; M. Isolina Dabove, Argentina; Moderator: Julia Zinsmeister, Germany

Danish point of view:

Kirsten Ketscher, Denmark

Elder care abuse is generally underexposed in the legal regulation both nationally and internationally. The attention level consequently is very low. Combination of old age and special vulnerability is a new legal field. The importance of this issue will be reflected in the rising life expectancy.

The traditional concept of adult guardianship has not addressed these issues. In Scandinavia it is to a large extent a state responsibility to deal with these problems. However financial cuts threaten the wellbeing and welfare of the elderly both concerning appropriate care and safety (abuse). These problems are exposed in court practice as criminal cases where the failure of the system rarely is being included.

In social legal practice we see a generous attitude towards cuts within the elder area based on a wide margin of discretion for authorities. Often these decisions have the character of elderly age discrimination and represents an abolishing of the principle of horizontal solidarity between generation. The intersectional discrimination of old age and special vulnerability is in acute need of legal attention and legal research.

Adult guardianship as a legal figure must be constructed according to comprise these problems. Can we or how can we rethink this traditional legal figure of guardianship into a reality with at growing elderly population? This not only has to do with empowering the guardian's function and competence but also with strengthening of substantial rights as a platform for the guardian act on. Minimum standards could be an essential legal tool for guardianship.

Argentinian point of view:

M. Isolina Dabove, Argentina

Elder abuse is one of the most important social problems in the world and it has grown with the global aging. The new Inter American Convention on protecting the human rights of older persons (OAS, 2015) defined it as: *a single or repeated act or omission to the detriment of an older person that harms their physical, mental, or moral integrity and infringes the enjoyment or exercise of their human rights and fundamental freedoms, regardless of whether or not it occurs in a relationship of trust*. It may also reflect intentional or unintentional neglect (WHO, 2002).

Globally, between 4% and 6% of older people have experienced some form of abuse, causing serious physical injuries and long-term psychological disorders. Many of them are mistreated and abandoned

in their own homes, in relatives¹ homes, and even in facilities responsible for their care. Older women often are the most vulnerable of all of them.

The promotion of personal autonomy and the empowerment of the elderly in dependency situation contribute to eradicate elder abuse.

Argentine Law and the new Inter American Convention recognize some instruments to fulfill this purpose. Among others, they are: living wills, free and informed consent on health matters, intervene of volunteers and social net, phone call or computer monitoring systems, judicial control on safeguards relating to exercise of legal capacity, the development of training programs about elderly rights for family members, caregivers, guardians, security forces, judges, lawyers, notaries and their diffusion by mass media programs. We will discuss about them.

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